

AS

BEFORE

THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 97-463-C - ORDER NO. 98-110

FEBRUARY 13, 1998

IN RE: Application of LDM Systems, Inc. for) ORDER
a Certificate of Public Convenience and) APPROVING
Necessity to Provide Local Telecommuni-) CERTIFICATE TO
cations Services within the State of) PROVIDE LOCAL
South Carolina.) SERVICE

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of LDM Systems, Inc. ("LDM" or "the Company"). The Application requests that the Commission issue a Certificate of Public Convenience and Necessity authorizing LDM to provide local exchange telecommunications services in the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed LDM to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings and to provide notice of the hearing date on this matter. LDM complied with this instruction and provided the

Commission with proof of publication of the Notice of Filing and Hearing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on February 5, 1998, at 10:30 a.m. in the Commission's Meeting Room. The Honorable Guy Butler, Chairman, presided at the hearing. LDM was represented by John Pringle, Esquire. The Commission Staff ("Staff") was represented by F. David Butler, General Counsel. SCTC did not appear at the hearing.

Prior to the hearing, LDM and the SCTC executed a Stipulation. The Stipulation was filed with the Commission prior to the hearing in this matter. As a result of the Stipulation, SCTC withdrew its opposition to LDM's Application. The Stipulation provides the following:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to LDM if the Commission makes the necessary findings to grant the Certificate and if all stipulated conditions are met;
- (2) LDM agrees that any Certificate granted by the Commission will authorize LDM to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) LDM agrees that it is not requesting the Commission to find whether competition is in the public interest for rural areas;
- (4) LDM agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until LDM provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have

the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. LDM also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

- (5) LDM agrees that if, after LDM gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then LDM will not provide service to any customer located within the service area in question without prior and further Commission approval;
- (6) LDM acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;
- (7) LDM and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and
- (8) LDM agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and LDM, was filed with the Commission prior to the

hearing in this matter, and was made a part of the record at the hearing. We therefore approve the stipulation.

In support of its Application, LDM presented Kurt Beebe, of LDM Systems, Inc., to testify. The purpose of Mr. Beebe's testimony was (1) to present evidence on the financial, managerial, and technical abilities of LDM to provide local exchange service to locations within South Carolina and (2) to discuss the services which LDM proposes to offer.

DISCUSSION

S.C. Code Ann. §58-9-280 (Supp. 1996) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, LDM's Application, and the evidence presented at the hearing, the Commission finds and concludes that the Certificate sought by LDM should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented at the hearing which relates to that criteria:

(1) The Commission finds that LDM possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). Mr. Beebe testified that LDM has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which LDM seeks authority.

According to Mr. Beebe, LDM intends to offer local exchange services only on a state-wide basis between points where facilities are available.

Mr. Beebe stated that LDM's management team has considerable experience and stated that LDM possesses the necessary management and technical resources to provide the services for which it seeks authority.

Regarding LDM's financial resources, the record reveals that LDM is incorporated under the laws of the State of New York. Mr. Beebe testified that LDM is adequately funded and has sufficient financial resources to provide local services.

No other party offered any evidence in opposition to Mr. Beebe's testimony. Based on the undisputed evidence of the record, the Commission finds that LDM possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that LDM will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Beebe specifically stated that LDM will comply with all applicable rules, policies, and statutes applicable to the offering of those services and that LDM fully intends to meet the Commission's service standards. Furthermore, counsel for LDM stated that LDM would make certain changes to its tariff, as suggested by Staff, to bring the tariff into compliance with Commission Rules and Regulations. No party offered any evidence to dispute Mr. Beebe's testimony. Based on the undisputed

testimony from Mr. Beebe, the Commission believes, and so finds, that LDM will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that LDM's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Beebe stated that LDM's service offerings would not adversely impact the availability of affordable local exchange service. No party offered any evidence that the provision of local exchange service by LDM would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by LDM will not adversely impact affordable local exchange service.

(4) The Commission finds that LDM will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Beebe testified that LDM will comply with the Commission's universal service requirements. No party disputed Mr. Beebe's testimony. Based on the undisputed evidence of record, the Commission finds that LDM will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by LDM "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Beebe offered that approval of LDM to provide local telecommunications services will benefit consumers by making local service more

affordable and available. Mr. Beebe's testimony was undisputed as no party offered any evidence that approval of LDM's Application would adversely impact the public interest. Therefore, the Commission finds that approval of LDM's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by LDM should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of LDM for a Certificate of Public Convenience and Necessity authorizing LDM to provide local exchange telecommunications services in the State of South Carolina is approved.

2. The Stipulation filed by LDM and the SCTC is approved by this Commission, is binding upon LDM and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina. LDM shall conduct its operations in compliance with the Stipulation until further Order of the Commission.

3. LDM shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes as proposed by the Commission Staff and to which LDM agreed.

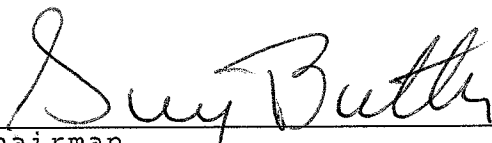
4. LDM shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is

prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, LDM shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. LDM shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, LDM shall promptly notify the Commission in writing if the representatives are replaced. LDM is directed to comply with all Commission regulations unless expressly waived by the Commission.


5. LDM shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

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ATTACHMENT A

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230